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In the Matter of:	:	
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	:	HUDBCA No. 04-D-CH-EE031
<b>Real Estate Plus Mortgage,</b>	:	Claim No. 7-707007990A
	:	
Petitioner	:	

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**DECISION AND ORDER**

Petitioner was notified by Due Process Notice that, pursuant to 31 U.S.C. § 3720A, the Secretary of the U.S. Department of Housing and Urban Development (“HUD”) intended to seek administrative offset of any Federal payments due to Petitioner in satisfaction of a delinquent and legally enforceable debt allegedly owed to HUD. The claimed debt has resulted from a defaulted loan that was insured against nonpayment by the Secretary pursuant to Title I of the National Housing Act. (12 U.S.C. § 1703).

Petitioner has made a timely request for a hearing concerning the existence, amount or enforceability of the debt allegedly owed to HUD. The administrative judges of this Board have been designated to conduct a hearing to determine whether the debt allegedly owed to HUD is legally enforceable. (24 C.F.R. § 17.152(c)). As a result of the Petitioner’s request, referral of the debt for offset was temporarily stayed by the Board until issuance of this written decision.

**Background**

On or about July 18, 1996, Petitioner, Real Estate Plus Mortgage (“REPM”), as mortgagee, entered into a HUD-insured loan agreement with a borrower. (Secretary’s Statement, hereinafter “Secy. Stat.,” ¶ 2). On or about June 1, 1998, the borrower-mortgagor defaulted on the loan. (Secy. Stat., Exh. A, Declaration of Glen Goodman, hereinafter “Goodman Decl.,” ¶ 4). HUD paid an insurance claim for this loan on September 23, 1999. (Secy. Stat., ¶ 4). The property was sold on December 16, 1999 for \$75,000.00. (Goodman Decl., ¶ 5).

A review of Petitioner’s loan by HUD’s lender monitoring team in 1999 found noncompliant lending activities by Petitioner which exposed HUD to an unacceptable level of risk. (Goodman Decl., ¶ 4). To resolve these findings, Petitioner agreed to indemnify HUD for any loss HUD incurred as insurer of this loan by executing an indemnification agreement on February 3, 2000. (Secy. Stat., Exh. B). The agreement, in general, required Petitioner to reimburse HUD for any loss it incurred with respect to the sale of the subject property following foreclosure. Id.

Since proceeds from the sale of the property clearly did not provide enough funds to cover all of HUD's losses, HUD sought indemnification from Petitioner for HUD's remaining loss in accordance with the terms of HUD's investment due to the default included: insurance settlements, \$120,217.22 (Part A Claim Payment) and \$7,783.66 (Part B Claim Payment); maintenance and operation expenses, \$2,558.31; taxes, \$667.44 and sales expenses, \$1,206.54. (Goodman Decl., ¶ 5). On or about October 15, 2001, the Secretary, by his authorized agent, made a demand for payment under the indemnification agreement. (Secy. Stat., Exh. C). Petitioner did not comply with the Secretary's demand. Consequently, on or about June 14, 2004, a Notice of Intent to Collect the Debt by Offset ("Notice of Intent") was sent to Petitioner. (Goodman Decl., ¶ 7). Petitioner remains delinquent on this claim and is indebted to the Secretary in the following amounts: \$57,433.17 as the unpaid principal balance as of June 30, 2004; \$1,461.18 as the unpaid interest on the principal balance at 1% per annum through June 30, 2004; and interest on said principal balance from July 1, 2004, at 1% per annum until paid. (Goodman Decl., ¶ 6).

31 U.S.C. §3716 provides federal agencies with the remedy for collecting debts owed to the United States Government. The Secretary has filed a Statement with documentary evidence in support of his position that Petitioner is indebted to HUD in a specific amount. Petitioner disputes the existence of the debt.

Petitioner claims that, "At the time we signed the indemnification agreement dated February 3, 2000 case # 0419270379 (Lopez) was not part of our binding agreement." (Petitioner's Letter dated January 13, 2003, hereinafter "Pet. Jan. 13 Ltr."). The indemnification agreement signed by Petitioner and HUD clearly states: "REPMI agrees to indemnify HUD for losses which have been or may be incurred in accordance with the following FHA Case Number(s): Case Number 041-9270379 Lopez." (Secy. Stat., Exh. B, ¶ 1; Petitioner's Petition for Review of Enforceability of Debt dated August 6, 2004, hereinafter "Pet. Pet.," unmarked Exh.). The indemnification agreement is attached as an exhibit to the Secretary's Statement as well as the Petitioner's Petition for Review of Enforceability of Debt.

Petitioner also submitted a subsequent follow-up letter alleging that the debt in question is unenforceable because the indemnification agreement "was signed on February 3, 2000. Almost a year after the incident. Such loan was transfer [sic] by a private party in March 30, 1999." (Petitioner's Letter dated June 18, 2004, hereinafter "Pet. June 18 Ltr."). Petitioner has failed to adequately explain how these additional facts lend any support to its argument that the debt in question is not enforceable. As the Declaration of Glenn Goodman states:

There is no evidence in the collection file that case number 041-9270379 was not part of the Indemnification Agreement. There is no evidence in the collection file that the Petitioner was released from liability due to a transfer or for any other reason.

(Goodman Decl., ¶ 8).

Petitioner further alleges that it is not bound by the indemnification agreement because “an authorized representative of REPM did not execute the Agreement. Instead, the Agreement was executed by a REPM employee who did not have the authority to bind REPM. As REPM is not bound by the Agreement, it cannot owe a debt arising out of the terms of the Agreement.” (Pet. Pet., at p. 2). As background and explanation, Petitioner also states the following:

[T]he Agreement arose after a Quality Assurance Review conducted by [HUD]. During the Quality Assurance Review, Mohamed Reza Beihaghi, a/k/a Ray Beihaghi (“Beihaghi”), the sole shareholder of REPM, was under extreme emotional stress and left to go out of town. As a consequence, a REPM employee, Fred Shayesteh (“Shayesteh”), provided HUD representatives with the information they requested. Shayesteh also agreed to sign the Agreement and did so. However, Shayesteh was not authorized to sign such an agreement on REPM’s behalf. Shayesteh was not an officer or director of REPM and was not given authority by an officer, director or the sole shareholder to bind REPM to the Agreement....

When Beihaghi became aware of the Agreement, Shayesteh told him that the Agreement was just a formality. Beihaghi understood the Agreement to be an acknowledgment of the QAR and did not know the Agreement created an obligation on REPM. Beihaghi is an immigrant to the United States and, because of this status and his cultural experiences, he is intimidated by dealings with the government. Because he understood the Agreement to be only a formality, he decided not to question the Agreement in order to avoid further interactions with the government.

When HUD contacted him regarding payment of the obligation arising under the Agreement, it was the first time he became aware of the obligation created by the Agreement. In addition, he learned that the subject property of the Agreement had been foreclosed upon prior to Shayesteh signing the Agreement—a fact not disclosed to Shayesteh prior to signing the Agreement.

(Pet. Petition, pp. 1-2).

Petitioner argues that Shayesteh, the REPM employee who signed the indemnification agreement, was not authorized to do so. However, this employee, through his actions, represented to HUD that he was legally authorized to execute the agreement and in doing so, bind the company to its terms. “[A] REPM employee, Fred Shayesteh...provided HUD representatives with the information they requested. Shayesteh also agreed to sign the Agreement and did so.” (Pet. Petition, at p. 1). HUD had no reason to believe otherwise and in good faith relied on the assertions and representations of Shayesteh, who was their point of contact during the Quality Assurance Review of REPM. If Shayesteh was not authorized to make legal decisions for the company in his absence, Beihaghi should have informed the members of the HUD lender team who were conducting the Quality Assurance Review of this fact and appointed someone to act on his behalf in his absence before he left town. Beihaghi failed to take any such precautionary action.

Furthermore, neither Beihaghi’s desire to avoid interaction with the government due to intimidation nor his status as an immigrant excuse him for not questioning the meaning of the Agreement if he did not fully understand its terms and conditions and the legal obligations it imposed on his company. Once Beihaghi became aware that Shayesteh had signed a document on his behalf in his absence he should have followed up with the proper HUD representatives to ascertain the meaning of the document, especially since as he alleges, Shayesteh, “did not have the authority to bind REPM.” (Pet. Pet., at p. 2).

Petitioner has cited neither legal authority nor any language in the indemnification agreement which would make the agreement unenforceable against it based on its arguments set forth above. Therefore, Petitioner’s claims must fail for lack of proof and Petitioner is bound to the terms of the agreement.

### **ORDER**

Upon due consideration, I find that the claim which is the subject of this proceeding is legally enforceable against Petitioner in the amount claimed by the Secretary. It is hereby **ORDERED** that the Secretary is authorized to seek collection of this outstanding obligation by means of administrative offset of any federal payments due to Petitioner.

The Order imposing the stay of referral of this matter to the Internal Revenue Service or to the U.S. Department of the Treasury for administrative offset is vacated.

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Jerome M. Drummond  
Administrative Judge

March 23, 2005